DOCUMENT RESUME

ED 135 186 EC 093 162

AUTHOR Friedman, Paul, Ed.; Beck, Ronna Lee, Ed.
TITLE Mental Retardation and the Law: A Report on Status of Current Court Cases.
INSTITUTION President's Committee on Mental Retardation, Washington, D.C.
REPORT NO (OHD)-77-21012
PUB DATE Jan 77
NOTE 26p.

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS Architectural Barriers; *Court Cases; Criminal Law; Education; Employment; *Legislation; *Mentally Handicapped; Placement; Sexuality; Therapy; Zoning

ABSTRACT

Included in the booklet on mental retardation and the law are reports on 11 new court cases and updated information on 35 court cases reported in previous issues. Court cases cover the following issues: architectural barriers, commitment, criminal law, education, employment, guardianship, protection from harm, sterilization, treatment, and zoning. Information on each current case includes the state involved, the cases title, and a brief summary of the action. (SBH)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED135186

MENTAL RETARDATION and the LAW

A Report on Status of Current Court Cases

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

JANUARY 1977

This issue of "Mental Retardation and the Law" contains reports on 11 new cases (indicated as new in the text by an asterisk) and updated information on 35 cases reported in previous issues.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Assistant Secretary for Human Development
President's Committee on Mental Retardation
Washington, D.C. 20201 U.S.A.

DHEW Publication No. (OHD) 77-21012

FC093162

Prepared by Mr. Paul Friedman
and Ms. Ronna Lee Beck for the
President's Committee on Mental
Retardation, with support from
the Office of Child Development.

TABLE OF CONTENTS

		Page
I.	CURRENT CASES	1
A.	ARCHITECTURAL BARRIERS	1
	District of Columbia: Washington Urban League, Inc., et al. v. Washington Metropolitan Area Transit Authority, Inc.	1
B.	COMMITMENT	1
	Pennsylvania: Bartley, et al v. Kremens, et al.	1
C.	CRIMINAL LAW	1
	District of Columbia: United States v. Masthers	1
D.	EDUCATION	1
	Arizona: Eaton, et al. v. State of Arizona	1
	Georgia: David v. Wynne*	2
	Illinois: C.S., et al. v. Deerfield Public School District #109	2
	Illinois: W.E., et al v. Board of Education of the City of Chicago, et al.	2
	Indiana: Dembowski v. Kno[illegible] Community School Corporation, et al.	2
	Mississippi: Mattie T. v. Holladay	2
	New York: In the Matter of Tracy Ann Cox*	3
	New York: In the Matter of Richard G*	3
	North Carolina: North Carolina Association for Retarded Children, et al. v. State of North Carolina, et al.	4
	Pennsylvania: Fialkowski v. Shapp	4

* Cases reported for the first time in this issue are marked with an asterisk.

Page

Virginia: Kruse, et al v. Campbell, et al.* 4

E. EMPLOYMENT. 5

Indiana: Sonnenburg v. Bowen 5

Massachusetts: Smith and Doe v. United States Postal Service*. 5

Montana: Littlefield v. State of Montana*. 5

New Jersey: Schindenwolf, et al v. Klein, et al. 6

F. GUARDIANSHIP. 6

Connecticut: Albrecht v. Tepper 6

Michigan: Schultz v. Borradaile 6

G. PROTECTION FROM HARM. 6

Pennsylvania: Romeo v. Youngberg*. 6

New York: New York State Association for Retarded Children v. Carey. 7

H. STERILIZATION 7

District of Columbia: Relf v. Weinberger; National Welfare Rights Organization, et al. v. Weinberger, et al. 7

North Carolina: Cox v. Stanton, et al. 7

North Carolina: North Carolina Association for Retarded Children, et al. v. State of North Carolina. 7

North Carolina: Trent v. Wright 8

Tennessee: In re Lambert* 8

Page

I. TREATMENT 8

District of Columbia: Dixon v. Weinberger. . . . 8

District of Columbia: Evans v. Washington. . . . 8

Florida: Donaldson v. O'Connor 8

Louisiana: Gary W. v. State of Louisiana. . . . 9

Maine: Wouri v. Rosser 9

Maryland: Bauer v. Mandel 9

Maryland: United States v. Solomon, et al. 9

Massachusetts: Gauthier v. Benson*. 10

Michigan: Jobes, et al. v. Michigan Department of Mental Health. 10

Minnesota: Welsch v. Likins 10

Mississippi: Doe v. Hudspeth. 11

Missouri: Barnes, et al. v. Robb, et al. 11

Montana: United States v. Mattson. 11

Nebraska: Horacek, et al. v. Exon, et al. 11

Ohio: Ohio Association for Retarded Citizens v. Moritz* 12

Pennsylvania: Halderman v. Pennhurst State School and Hospital. 12

Washington: Preston v. Morris. 12

Washington: White v. Morris. 13

J. ZONING. 13

Massachusetts: Zarek v. Attleboro Area Human Services, Inc. 13

Michigan: Michigan Association for Retarded Citizens v. the Village of Romeo* 13

II. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW" 14

I. CURRENT CASES.

A. ARCHITECTURAL BARRIERS.

DISTRICT OF COLUMBIA: Washington Urban League, Inc., et al. v. Washington Metropolitan Area Transit Authority, Inc., Civil No. 776-72 (D.D.C.).

The district court has refused to modify an injunction entered on October 23, 1973, prohibiting the Metropolitan Transit Authority from operating its subway system until all facilities are accessible to physically handicapped persons. In an order dated August 31, 1976, the court refused to permit the opening of the Gallery Place station which fails to comply with the Architectural Barriers Act of 1968 because of its inaccessibility to handicapped persons. The court rejected an argument by local businessmen that "the injunction helps no one, and harms everyone." In so ruling the court noted that the danger that the transit authorities would in the future fail to comply with the Architectural Barriers Act continues to be substantial.

B. COMMITMENT.

PENNSYLVANIA: Bartley, et al. v. Kremens, et al., 402 F. Supp. 1039 (E.D. Pa. 1975).

The Bartley case was argued before the U.S. Supreme Court on December 1, 1976. A decision is expected by the spring.

C. CRIMINAL LAW.

DISTRICT OF COLUMBIA: United States v. Masthers, 539 F.2d 721 (D.C. Cir. 1976).

On remand from the U.S. Court of Appeals, the federal district court conducted an evidentiary hearing on September 17, 1976. Expert witnesses confirmed that the defendant was mildly retarded and testified that at the time of his guilty plea, he did not understand what the Constitution was, let alone knowingly waive his constitutional rights. On the basis of this testimony, the court vacated the earlier guilty plea and sentence and then allowed the defendant to enter a new guilty plea, based upon careful explanation in simple language of his rights. The court then sentenced him to the time he had already served, thus restoring his liberty.

D. EDUCATION.

ARIZONA: Eaton, et al. v. State of Arizona, Civil No. 329028 (Superior Ct., Ariz.), filed December 10, 1974.

No known new developments.

GEORGIA: David v. Wynne,* Civil No. LU-176-44 (S.D. Ga.), filed March 23, 1976.

Plaintiff in this suit was a 17-year-old learning disabled student who had been expelled from public school as a result of his handicap. Plaintiff, relying on the equal protection clause of the Fourteenth Amendment to the United States Constitution and §504 of the Rehabilitation Act of 1973, had sued to obtain an appropriate education.

In the settlement agreement, defendants agree to refer plaintiff to a technical school, to pay for the fees and transportation and to facilitate the provision of psychological counseling.

ILLINOIS: C.S., et al. v. Deerfield Public School District #109, Civil No. 73 1 284 (Circuit Ct., 19th Judicial Circuit, Lake County, Ill.).

No new developments.

ILLINOIS: W.E., et al. v. Board of Education of the City of Chicago, et al., Civil No. 73 CH 6104 (Circuit Ct., Cook County, Ill.).

No new developments.

INDIANA: Dembowski v. Knox Community School Corporation, et al., Civil No. 74-210 (Starke County Ct., Ind.), filed May 15, 1974.

No new developments.

MISSISSIPPI: Mattie T. v. Holladay, Civil No. DC-75-31-S (N.D. Miss.), filed April 25, 1975.

On December 13, 1976, plaintiffs filed a comprehensive motion for summary judgment challenging the state defendants' failure to enforce provisions of the Education of the Handicapped Act - Part B that require:

- prior notice and an impartial due process hearing to challenge educational evaluations and placements of children who are handicapped or labeled as handicapped by their schools, 20 U.S.C. §1413(a)(13)(A);

- the location and identification of all handicapped children in the state in need of special education services, 20 U.S.C. §1413(b)(1)(A);

- the use of racially and culturally non-discriminatory tests and procedures to classify and place handicapped children, 20 U.S.C. §1413(a)(13)(C); and

- the education of handicapped children in normal school settings with non-handicapped children to the maximum extent appropriate, 20 U.S.C. §1413(a)(13)(B).

This motion was supported by expert affidavits by Jane R. Mercer on non-discriminatory testing and Milton Budoff on education in the most normal setting possible, by affidavits by parents from a number of counties in Mississippi describing the difficulties they have encountered in trying to get necessary educational services for their children, and by extensive documentation of the state's deficiencies drawn from a year's formal discovery.

Plaintiffs' motion to certify the class, as well as defendants' motion to dismiss, are also pending before the court.

NEW YORK: In the Matter of Tracy Ann Cox,* Civil No. H4721-75 (N.Y. Family Ct., Queens County, April 8, 1976).

In this case, the court ordered that the family of a mentally retarded child be reimbursed from state education funds for the costs of the child's maintenance in a facility serving mentally disabled children. The court ordered reimbursement even though the facility had not been approved as an educational institution by the state education department.

In support of its ruling the court recognized that education means different things to different children. The court stated that a mentally retarded child:

> "...requires another kind of 'education' -- how to hold a spoon, feed herself, dress herself, toilet training, et cetera, in addition to speech therapy, psychiatric and psychological treatment, et cetera -- all these and more add up to the education of this and other mentally retarded children, and they are entitled to be so educated. And if [the facility in question] can achieve its goals, and in some measure, improve the child's skills, it surely is worth the efforts of the [facility] staff, and the funds of the city and state."

NEW YORK: In the Matter of Richard G,* (N.Y. Sup. Ct., App. Div., 2nd Dept., May 17, 1976).

A lower court in this case ordered the city of New York, pursuant to state education law, to reimburse the parents of a ten-year-old handicapped child for the cost of summer camp tuition.

On appeal the Appellate Divison held that:

> "Where the needs of the child dictate the Family Court has the authority to order that educational services be provided during the months of July and August, as well as during the traditional school year."

The court, however, remanded the case to the lower court, holding that the family must first establish:

"...whether the child in question required educational services during the summer, whether the summer camp provides educational services, whether the goals set for the child in the individual treatment plan were per se educational or necessary to his education, or whether his education would have regressed had he not participated in the summer program."

NORTH CAROLINA: North Carolina Association for Retarded Children, et al. v. State of North Carolina, et al., Civil No. 3050 (E.D.N.C.), filed May 18, 1972.

Educational issues in this case are still pending. But see case description under "Sterilization" for discussion of the sterilization issues.

PENNSYLVANIA: Fialkowski v. Shapp, 405 F. Supp. 946 (E.D. Pa. 1975).

On the eve of trial, this case was transferred to the three-judge district court which has jurisdiction in the case of Pennsylvania Association for Retarded Children, et al. v. Commonwealth of Pennsylvania, et al., 344 F. Supp. 1275 (E.D. Pa. 1971) (reported in previous issues of "MR and the Law").

VIRGINIA: Kruse, et al. v. Campbell, et al.,* Civil No. 75-0622-R (E.D. Va.), filed December 1, 1975.

A three-judge district court in Virginia has held Virginia's system for providing special education tuition grants for handicapped children unconstitutional.

Plaintiffs in this class action are all disabled Virginia children and their parents who have been or will be eligible for tuition assistance grants, but who are unable to pay those costs of an appropriate private education which are not covered by the grants due to lack of financial resources.

Defendants include the superintendent of the Virginia Department of Education, the division superintendent of the Fairfax County School Board, the commissioner of the Virginia Department of Welfare and the director of the Fairfax County Department of Social Services.

The Virginia system attacked by plaintiffs provides state tuition grants to parents of certified handicapped children for 75 percent of the tuition charged for an approved private educational program. The grants, however, are limited by statute to $1,250 for non-residential facilities and $5,000 for residential schools. Parents who are unable to afford their proportional cost of the tuition can obtain the full cost of tuition from the local Department of Public Welfare, but only by giving up custody of their child.

In an order dated September 9, 1976, the court directed plaintiffs to file a new plan for tuition reimbursement. In a memorandum filed in

response to the court order, plaintiffs call for fully funded private education, without surrender of custody, whenever appropriate public education is unavailable.

E. EMPLOYMENT.

INDIANA: Sonnenburg v. Bowen, Civil No. P.S.C. 1949 (Porter Cty. Cir. Ct., Ind.), filed October 9, 1974.

The case is still pending in the Porter County Circuit Court with no new developments.

MASSACHUSETTS: Smith and Doe v. United States Postal Service,* Civil No. 76-2452-S (D. Mass.), filed June 21, 1976.

This class action was filed in the United States District Court in Massachusetts by two mentally retarded postal workers on behalf of all physically and mentally handicapped persons employed by the defendant, the United States Postal Service.

Plaintiffs claim that the defendant discriminates against handicapped persons with respect to seniority rights in violation of the Rehabilitation Act of 1973, the Postal Reorganization Act of 1970 and the federal regulations governing persons in federal service, the Fifth Amendment to the United States Constitution and labor-management contracts entered into by the defendant.

Specifically, named plaintiffs allege that because of their handicaps, they will not be permitted to accrue seniority rights until having worked with the Postal Service for six years. As a result of the discrimination, plaintiffs allege that they were grouped with the 56 most junior employees who were recently demoted to part-time jobs.

Plaintiffs seek declaratory and injunctive relief as well as damages.

A motion to dismiss by defendant is pending before the court.

MONTANA: Littlefield v. State of Montana,* Civil No. 38794 (1st Jud. Dist., Montana, October 1, 1976).

Plaintiff in this case was a mentally retarded former resident of the Boulder River School and Hospital in Montana. While a resident at the school he performed general maintenance work from 1957 until 1974, and was compensated at approximately $2 per month. Upon his release from the institution he was hired to perform the same work which he had done previously as a resident. At this point, however, he joined the local union and received a legal wage. On December 10, 1974, he brought suit against the Director of the Department of Institutions and the State of Montana for back wages and damages under the state and federal minimum wage laws. After plaintiff brought his suit for wages and damages, the

defendants counterclaimed for approximately $25,000 in allegedly unpaid reimbursement owed by the plaintiff for the cost of his care and treatment while at the Boulder River School and Hospital. As a defense in response to the defendants' counterclaim, the plaintiff also counterclaimed for $10,000 punitive damages for the allegedly wrongful charging of reimbursement costs. On September 22, 1976, the plaintiff and defendants entered into a consent judgment under which the defendants agreed to pay the plaintiff the sum of $15,000 in exchange for plaintiff's agreement to dismiss the suit. The state court ratified this consent judgment on October 1, 1976.

NEW JERSEY: Schindenwolf, et al. v. Klein, et al., Civil No. L-41293-75 PW (Superior Ct., N.J.), filed June 25, 1976.

No new developments.

F. GUARDIANSHIP.

CONNECTICUT: Albrecht v. Tepper (Carlson), Civil No. H-263 (D. Conn.), filed December 13, 1973.

On October 6, 1976, plaintiffs filed a supplemental memorandum in support of their motion for final judgment and supplemental relief. In the memorandum plaintiffs acknowledge that there is no longer a need for the contested Connecticut statute to be declared unconstitutional, since it has been repealed. Plaintiffs also discuss recent developments in the judicial construction of the Eleventh Amendment, the constitutional provision upon which the defendant relies to deny the plaintiffs the relief they request.

MICHIGAN: Schultz v. Borradaile, Civil No. 74-40123 (E.D. Mich.), filed October 25, 1974.

The motions under submission to the court remain undecided.

G. PROTECTION FROM HARM.

PENNSYLVANIA: Romeo v. Youngberg,* Civil No. 76-3429 (E.D. Pa.), filed November 1976.

Plaintiff, a profoundly retarded resident of Pennhurst State School and Hospital, claims in this case that his constitutional rights under the Eighth and Fourteenth Amendments have been violated by defendants' breach of their duty to provide reasonable care.

Plaintiff alleges that during his two-year stay at the hospital he has suffered injuries from third parties on at least 63 occasions. Plaintiff further alleges that although defendants had knowledge of these incidents they have failed to take action to protect him.

Plaintiff seeks a declaration that the officials have failed to provide for his safety in violation of his civil rights. Plaintiff further seeks an injunction requiring defendants to place him in a mental retardation facility which is equipped to provide for his physical safety. Plaintiff also seeks damages.

NEW YORK: New York State Association for Retarded Children v. Carey, 393 F. Supp. 714 (E.D.N.Y. 1975), 357 F. Supp. 752 (E.D.N.Y. 1973).

Plaintiffs have filed a motion for contempt against the defendants for failure to meet the standards set forth in the earlier consent judgment in this case. The evidentiary hearing on plaintiffs' motion for contempt is scheduled to begin on February 7, 1977.

H. STERILIZATION.

DISTRICT OF COLUMBIA: Relf v. Weinberger; National Welfare Rights Organization, et al. v. Weinberger, et al., 372 F. Supp. 1196 (D.D.C. 1974), 403 F. Supp. 1235 (D.D.C. 1975).

The case was argued in the Court of Appeals on November 18, 1976.

NORTH CAROLINA: Cox v. Stanton, et al., Civil No. 800 (E.D.N.C.), filed January 8, 1974.

No known new developments.

NORTH CAROLINA: North Carolina Association for Retarded Children, et al. v. State of North Carolina, et al., Civil No. 3050 (E.D.N.C.), decided October 1, 1976.

The constitutionality of substantially all of North Carolina's involuntary sterilization statute, which relates to mentally retarded persons, has been upheld by a three-judge federal court.

The court construed the statute to mean that:

1. only the director of the institution in which a mentally retarded person resides or the county director of social services may initiate a sterilization procedure; and

2. sterilization may only be ordered based on clear, strong and convincing evidence that the mentally retarded person is likely to engage in sexual activity without using contraceptive devices, and that either a defective child is likely to be born or that the person would be unable to care for the child.

The court struck down a provision of the statute which would have empowered a next of kin or guardian to require the initiation of sterilization procedures.

NORTH CAROLINA: Trent v. Wright (E.D.N.C.), filed January 18, 1974.

No known new developments.

TENNESSEE: In re Lambert,* Civil No. 61156 (Tenn. Prob. Ct., Davidson County, March 1, 1976).

A Tennessee probate court has refused to appoint the mother of a mentally retarded minor as the minor's conservator for the purposes of consenting to a hysterectomy.

The court held that there is "no legislation in Tennessee which gives a court jurisdiction to authorize the performance of the operation here suggested upon persons not competent to make a decision for themselves."

The court rejected arguments by the mother that it had inherent power to permit such a procedure, and refused to do so absent specific statutory authority.

I. TREATMENT.

DISTRICT OF COLUMBIA: Dixon v. Weinberger, 405 F. Supp. 974 (D.D.C. 1975).

The court has still not ruled on defendants' outline. Thus, this case remains in limbo.

DISTRICT OF COLUMBIA: Evans v. Washington, Civil No. 76-0693 (D.D.C.), filed February 23, 1976.

On July 30, 1976, the court granted the motion of the United States to proceed as amicus curiae.

FLORIDA: Donaldson v. O'Connor, 422 U.S. 563, 95 S. Ct. 2486 (1975).

On January 3, 1977 the parties agreed to a consent judgment under which Defendant Gumanis and the estate of Defendant O'Connor each agreed to pay Donaldson $10,000, which will "constitute a full and complete settlement of all claims for damages, court costs or other costs or claims between plaintiff and defendants," except for plaintiff's claims for attorneys' fees. Ratification of this consent decree by the court is expected shortly. Thus, the only issue which remains in this case is plaintiff's claim for attorneys' fees under the recent Civil Rights Attorneys' Fees Act of 1976, P.L. 94-599, which went into effect on October 19, 1976. This act gives judges discretion to award reasonable attorneys' fees to the prevailing party in cases brought under §1983 of the Civil Rights Act, which provides a cause of action for violation of an individual's constitutional rights by state officials acting under color of state law. The decision in this case on attorneys' fees will be important precedent indicating whether attorneys litigating constitutional rights cases on behalf of mentally handicapped persons can have

a reasonable expectation of recovering attorneys' fees under the new act. If such fees can be recovered, the availability of legal counsel for mentally handicapped persons will certainly increase.

LOUISIANA: Gary W. v. State of Louisiana, Civil No. 74-2412 (E.D. La.), decided July 26, 1976.

On July 26, 1976, the court ruled that every Louisiana child placed in a Texas facility "has the right to care, education, medical and personal treatment suited to his characteristics and needs regardless of his age, degree of retardation or handicapping conditions." The state was directed to spend at least as much per capita for alternative care as it currently spends on Louisiana children in Texas facilities. Further, the court ordered that the children must be returned to Louisiana for thorough evaluations by the LSU Medical School, and that detailed individual treatment plans must be prepared and fully implemented for each child. Among the factors to be considered by LSU in making the placement recommendation for each child is the geographic location of the proposed placement. Placements may only be made if they are in conformance with the individual treatment plans. The court then issued a detailed order on December 2, 1976, setting forth standards to govern placements, periodic reviews and treatment.

The court further ruled that all Louisiana children must be permanently removed from certain of the Texas institutions which were proved at trial to be inadequate, and, in an order entered on September 22, 1976, it required that each child presently at those institutions be placed in accordance with his or her LSU placement recommendation, regardless of the cost of obtaining such a placement. The first 85 placement recommendations have now been made by LSU, and they require foster homes or small group homes near the child's natural family in Louisiana.

On December 28, 1976, a hearing was held to consider plaintiffs' claim for attorneys' fees under the Civil Rights Attorneys' Fees Act, P.L. 94-559, and to review state defendants' efforts to locate placements in accordance with the recommendations of the LSU evaluation team.

MAINE: Wouri v. Rosser, Civil No. 75-80-SD (S. D. Maine), filed August 22, 1975.

At a conference on September 10, 1976, the parties reported to the court that efforts to negotiate a consent decree had been unsuccessful. Trial has been scheduled for February 1977.

MARYLAND: Bauer v. Mandel, Civil No. 22-871 (Anne Arundel County Circuit Ct.), filed September 1975.

No known new developments.

MARYLAND: United States v. Solomon, et al., Civil No. N-74-181 (D. Md.), filed February 21, 1974.

The United States has appealed to the Fourth Circuit Court of Appeals. A brief urging reversal of the district court's order was filed on December 1, 1976.

The resolution of this case may affect ten other cases in Maryland, Montana, Alabama, New York, North Carolina, Nebraska, Pennsylvania, Louisiana, and the District of Columbia, in which the Office of Special Litigation in the Civil Rights Division of the Department of Justice is participating as litigating amicus curiae, plaintiff, or plaintiff-intervenor seeking to remedy violations of federal constitutional rights of mentally retarded persons.

MASSACHUSETTS: Gauthier v. Benson,* Civil No. 75-3910-T (D. Mass.).

This class action right to treatment suit involving the Manson State Hospital in Massachusetts has been settled by a consent decree. The decree sets out in great detail capital improvements which must be made at the institution. The agreement also calls for addition of an unspecified number of professional and direct care staff.

MICHIGAN: Jobes, et al. v. Michigan Department of Mental Health, Civil No. 74-004-130 DC (Cir. Ct., Wayne County, Mich.), filed February 19, 1974.

In an opinion in October 1974, two trials were scheduled to consider separately (1) whether children can consent to two medical research projects at Lafayette Hospital in Detroit, Michigan, and (2) whether it is against public policy to use children, especially those who are mentally disabled, in medical research. Subsequently, the Administrative Rules Committee of the Michigan Department of Mental Health enacted, on an emergency basis, rules which prohibited persons under 18 years of age from participating in medical research and experimentation not directly for their benefit if they were recipients of mental health services. Those rules have since expired, and the legislature is seeking the assistance of the National Commission for the Protection of Human Subjects in Biomedical and Behavioral Research before promulgating new administrative rules. Counsel for plaintiffs will decide whether to proceed to the trials when the new rules are published.

MINNESOTA: Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974).

The case is expected to be argued in the Eighth Circuit Court of Appeals in early 1977.

Amicus curiae briefs were submitted in support of the Commissioner of Public Welfare by Philip Kurland and Daniel Polsky of Chicago; the Attorney General of South Dakota, on behalf of the Minnesota State House and Senate of South Dakota; by the Attorney General of Texas, on behalf of the states of Texas, Hawaii, Tennessee, Florida, and Nebraska; and by the Attorney General of Pennsylvania on behalf of the Commonwealth of Pennsylvania.

The Mental Health Law Project, representing the National Association for Retarded Citizens, the Minnesota Association for Retarded Citizens and the Council for Exceptional Children, filed an amicus brief in support of the plaintiffs.

MISSISSIPPI: Doe v. Hudspeth, Civil No. J 75-36(N) (S.D. Miss.), filed February 11, 1975.

No known new developments.

MISSOURI: Barnes, et al. v. Robb, et al., Civil No. 75 CV87-C (W.D. Mo., Central Division), filed April 11, 1975.

This is a Wyatt-type class action, seeking injunctive relief, filed on behalf of patients involuntarily confined in the Forensic Unit at Fulton State Hospital, a state facility located in Fulton, Missouri. The Forensic Unit is the one maximum-security facility serving the Missouri Department of Mental Health. It contains both mentally ill and mentally retarded persons. While the majority of Forensic Unit patients are not mentally retarded, plaintiffs allege a complete lack of qualified staff and special programming to meet the special habilitative and treatment needs of the 10-20% of the population who are mentally retarded. Although the lack of proper programs for the mentally retarded "patients" is only one of a broad range of institutional inadequacies which plaintiffs seek to correct through the lawsuit, it is the one on which they have placed the greatest emphasis.

Plaintiffs have completed a great deal of discovery, and are now preparing for trial.

MONTANA: United States v. Mattson (Kellner), Civil No. 74-1-138 BU (D. Mont.), filed November 8, 1974.

This right to treatment and freedom from harm action brought by the United States, through the Attorney General, was dismissed by the district court on September 28, 1976. The court ruled that "the United States has no standing to sue," citing Judge Northrup's opinion in United States v. Solomon (above).

A notice of appeal was filed October 19, 1976.

NEBRASKA: Horacek, et al. v. Exon, et al., Civil No. 72-L-299 (D. Neb.).

This class action right to treatment case involving the Beatrice State Development in Nebraska was settled by a consent decree on October 31, 1975. The decree was amended on November 10, 1975.

On September 9, 1976, the United States of America, plaintiff-intervenor in the case, filed a motion which alleged that defendants have failed to comply with the consent decree and which called for a new hearing date.

In its motion, the United States pointed to several specific violations of the consent decree, including the following:

1. The consent decree provided for placement of residents in less restrictive community-based facilities. Under the decree, the

defendants were under an obligation to increase such programs and were bound to at least sustain the level of services and programming as they existed at the time of the decree. The United States alleges that:

> "...instead of the anticipated expansion of community-based programs...the direct opposite has occurred; namely, mentally retarded persons formerly resident in community-based programs have been returned to the Beatrice State Home and other institutions serving class members during the past year";

2. The consent decree recognized that institutionalized mentally retarded persons have a constitutional right to adequate care and habilitation. The United States contends that violations of those constitutional rights continue;

3. The consent agreement also called for creation of a mental retardation panel, which was to monitor implementation of each consent decree provision. The panel has not been established, however, since no money for its operation has been appropriated by the legislature and no alternative funding sources have been found.

On November 9, 1976 defendants filed a motion to dismiss on grounds that the United States lacks standing to intervene in this case. In support of their motion, defendants cite the Solomon and Mattson cases (reported above) in which the United States was dismissed as plaintiff.

OHIO: Ohio Association for Retarded Citizens v. Moritz,* Civil No. C-2-76-398 (S.D. Ohio), filed May 25, 1976.

This right to treatment class action has been filed on behalf of Ohio citizens who are both mentally ill and mentally retarded. Plaintiffs allege that members of the class are shuttled between mental retardation and mental health facilities, with both disclaiming responsibility for delivering treatment.

Plaintiffs seek declaratory and injunctive relief which would require defendants to evaluate the needs of each class member and to develop detailed treatment and habilitation standards for the class.

PENNSYLVANIA: Halderman v. Pennhurst State School and Hospital, Civil No. 74-1345 (E.D. Pa.), filed May 30, 1974.

On November 29, 1976, the court denied 11 motions by defendants, including a motion to dismiss. On January 4, 1977, the court granted a motion by plaintiffs for an injunction against destruction or alteration of records.

WASHINGTON: Preston v. Morris, Civil No. 77-9700 (Superior Ct., King County, Wash.), filed April 23, 1974.

No new developments.

WASHINGTON: White v. Morris, Civil Nos. 4350-I and 4493-I (Ct. of Appeals, Wash.).

Arguments were heard in the Court of Appeals in November, 1976.

J. ZONING.

MASSACHUSETTS: Zarek v. Attleboro Area Human Services, Inc., Civil No. 2450 (Superior Ct., Mass.), filed November 1975.

On June 11, 1976 the court granted declaratory relief to defendants, Attleboro Area Human Services, Inc.

The court found that the normalization program in the community residence encompasses a complete educational process rather than a custodial residential program. As a result, the court held that under state law the residence is exempt from local zoning prohibition since the facility is not a medical care or similar facility, but instead serves an educational purpose which is public.

MICHIGAN: Michigan Association for Retarded Citizens v. The Village of Romeo,* Civil No. 670769 (E.D. Mich.).

Plaintiffs in this suit are children with mental and physical disabilities and sponsoring organizations. They seek declaratory and injunctive relief against the defendant village and its officials to ensure that the plaintiff children have access to residential community settings. $200,000 in damages is also sought for each minor plaintiff.

Plaintiffs allege that the village's interpretation of the local zoning laws in a way that precludes establishment of a foster care home in "single family" areas deprives them of various constitutional and statutory rights.

II. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW"

A. ARCHITECTURAL BARRIERS

Alabama: Snowdon v. Birmingham-Jefferson County Transit Authority, No. 75-G-330-S (N.D. Ala.), decided June 24, 1975.

Maryland: Disabled in Action of Baltimore, et al. v. Hughes, et al., Civil Action No. 74-1069-HM (D. Md.).

Ohio: Friedman v. County of Cuyahoga, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Ohio), consent decree entered November 15, 1972.

B. CLASSIFICATION

California: Larry P. v. Riles, No. C-71-2270 (N.D. Calif.), preliminary injunction order, 343 F. Supp. 1306 (1972), affirmed, 502 F.2d 963 (9th Cir. 1974); supplementary order, December 13, 1974.

Louisiana: Lebanks, et al. v. Spears, et al., consent decree, 60 F.R.D. 135 (E.D. La. 1973).

Massachusetts: Stewart, et al. v. Philips, et al., Civil Action No. 70-1199-F (D. Mass.), filed September 14, 1970.

C. COMMITMENT

District of Columbia: Poe v. Weinberger, No. 74-1800 (D.D.C.), filed December 10, 1974.

District of Columbia: United States v. Shorter (Superior Ct., D.C.), decided November 13, 1974. No. 9076, (D.C. Ct. of Appeals), decided August 26, 1975.

Georgia: J.L. and J.R. v. Parham, No. 75-163-Mac (M.D. Ga., February 26, 1976).

Indiana: Jackson v. Indiana, 406 U.S. 715 (1972).

Michigan: White v. Director of Michigan Department of Mental Health, No. 75-10022 (E.D. Mich.), filed August 6, 1975.

Pennsylvania: Mersel v. Kremens, No. 74-159 (E.D. Pa.),decided August 20, 1975.

West Virginia: State ex rel. Miller v. Jenkins, No. 13340 (Supreme Ct. of Appeals, W.Va. at Charleston), decided March 19, 1974.

Wisconsin: State ex rel. Matalik v. Schubert, 47 Wis.2d 315, 204 N.W.2d 13 (Supreme Ct., Wis. 1973).

Wisconsin: State ex rel. Haskins v. County Court of Dodge County, 62 Wis.2d 250, 214 N.W.2d 575 (Supreme Ct., Wis. 1974).

D. CRIMINAL LAW

Georgia: Pate, et al. v. Parham, et al., Civil No. 75-46 Mac. (M.D. Ga.), decided September 19, 1975.

E. CUSTODY

Georgia: Lewis v. Davis, et al., Civil Action No. D-26437 (Superior Ct., Chatham County, Ga.), decided July 19, 1974.

Iowa: In the Interest of Joyce McDonald, Melissa McDonald, Children, and the State of Iowa v. David McDonald and Diane McDonald, Civil Action No. 128/55162 (Iowa Supreme Court, October 18, 1972).

Iowa: In the Interest of George Franklin Alsager, et al. and the State of Iowa v. Mr. and Mrs. Alsager, Civil Action No. 169/55148 (Iowa Supreme Court, October 18, 1972).

F. EDUCATION

California: California Association for Retarded Children v. State Board of Education, No. 237277 (Superior Ct., Sacramento County), filed July 27, 1973.

California: Case, et al. v. State of California, Civil Action No. 101679 (Superior Ct., Riverside County).

Colorado: Colorado Association for Retarded Children v. The State of Colorado, Civil Action No. C-4620 (D. Colo.).

Connecticut: Kivell v. Nemoitan, et al., No. 143913 (Superior Ct., Fairfield County, Conn.), decided July 18, 1972.

Delaware: Beauchamp v. Jones, No. 75-350 (D. Del.), filed October 23, 1975.

District of Columbia: Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (U.S. D. Ct., D.C. 1972). Supplemental Orders on Contempt and Master, March and July, 1975.

Florida: Florida Association for Retarded Children, et al. v. State Board of Education, Civil Action No. 730250-CIV-NCR (S.D. Fla.).

Florida: Florida ex rel. Stein v. Keller, No. 73-28747 (Circuit Ct., Dade County, Fla.).

Florida: Florida ex rel. Grace v. Dade County Board of Public Instruction, No. 73-2874 (Cir. Ct., Dade County, Fla.).

Kentucky: Kentucky Association for Retarded Children v. Kentucky, No. 435 (E.D., Ky.), consent decree,November, 1974.

Maryland: Maryland Association for Retarded Children, Leonard Bramble v. State of Maryland, Civil Action No. 720733-K (D. Md.). In the Maryland State Court, Equity No. 77676 (Circuit Ct. for Baltimore County), decided April 9, 1974.

Michigan: Harrison, et al. v. State of Michigan, et al., Civil Action No. 38557 (E.D., Michigan).

New Hampshire: Swain v. Barrington School Board, No. Eq. 5750 (Superior Ct., New Hampshire), decided March 12, 1976.

New York: Reid v. Board of Education of the City of New York, No. 8742 (Commission of Education for the State of New York), decided November 26, 1973. Federal Court Abstention Order, 453 F.2d 238 (2d Cir. 1971).

North Carolina: Hamilton v. Riddle, Civil Action No. 72-86 (Charlotte Division, W.D., N.C.).

North Dakota: In re G.H., Civil Action No. 8930 (Supreme Ct., N.D.), decided April 30, 1974.

North Dakota: North Dakota Association for Retarded Children v. Peterson (D.N.D.), filed November 1972.

Ohio: Cuyahoga County Association for Retarded Children and Adults, et al. v. Essex, No. C 74-587 (N.D. Ohio), decided April 5, 1976.

Pennsylvania: Pennsylvania Association for Retarded Children, et al. v. Commonwealth of Pennsylvania, et al., 344 F. Supp. 1275 (3-judge Court, E.D., Pa. 1971).

Rhode Island: Rhode Island Society for Autistic Children, Inc., et al. v. Board of Regents for Education of the State of Rhode Island, et al., Civil Action File No. 5081 (D.R.I.), sipulations signed September 19, 1975.

Washington: Rockafellow, et al. v. Brouillet, et al., No. 787938 (Superior Ct., King County, Wash.).

West Virginia: Doe v. Jones (Hearing before the State Superintendent of Schools), decided January 4, 1974.

Wisconsin: Marlega v. Board of School Directors of City of Milwaukee, Civil Action No. 70C8 (E.D.,Wis.), consent decree, September, 1970.

Wisconsin: Panitch, et al. v. State of Wisconsin, Civil Action No. 72-L-461 (D. Wis.).

Wisconsin: State of Wisconsin ex rel. Warren v. Nusbaum, ___ Wisc.2d ___, 219 N.W.2d 577 (Supreme Ct., Wis. 1974).

Wisconsin: Unified School District No. 1 v. Barbara Thompson, Case No. 146-488 (Cir. Ct., Dane Cty.). Memorandum Decision, May 21, 1976.

G. EMPLOYMENT

District of Columbia: National League of Cities v. Usery, ___ U.S. ___, 44 U.S.L.W. 4974 (June 24, 1976).

District of Columbia: Souder, et al. v. Brennan, et al., 367 F. Supp. 808 (D.D.C. 1973).

Florida: Roebuck, et al. v. Florida Department of Health and Rehabilitation Services, et al., 502 F.2d 1105 (5th Cir. 1974).

Iowa: Brennan v. State of Iowa, 494 F.2d 100 (8th Cir. 1973).

Maine: Jortberg v. Maine Department of Mental Health, Civil Action No. 13-113 (D. Maine), consent decree, June 18, 1974.

Missouri: Employees of the Department of Public Health and Welfare, State of Missouri v. Department of Public Health and Welfare of the State of Missouri, 411 U.S. 279 (1973).

Ohio: Souder v. Donahey, et al., No. 75222 (Supreme Ct., Ohio).

Ohio: Walker v. Gallipolis State Institute, Case No. 75CU-09-3676 (Court of Common Pleas, Franklin County, Ohio), dismissed September 8, 1976.

Tennessee: Townsend v. Clover Bottom Hospital and School, No. A-2576 (Chancery Court, Nashville, Tenn. 1974). Denial of defendants' motion to dismiss affirmed, 513 S.W.2d 505 (Tenn. Supreme Court 1974), appeal dismissed and certiorari denied June 9, 1975. Application by state for stay of judgment denied by Mr. Justice Stewart, June 23, 1975.

Tennessee: Townsend v. Treadway, Civil Action No. 6500 (M.D. Tenn.), decided September 21, 1973.

Wisconsin: Weidenfeller v. Kidulis, 380 F. Supp. 445 (E.D. Wis. 1975).

H. GUARDIANSHIP

Connecticut: McAuliffe v. Carlson, 377 F. Supp. 869 (D. Conn. 1974), supplemental decision, 386 F. Supp. 1245(D. Conn. 1975).

Pennsylvania: Vecchione v. Wohlgemuth, 377 F. Supp. 3161 (E.D. Pa. 1974).

I. PROTECTION FROM HARM

New York: Rodriguez v. State, 355 N.Y.S.2d 912 (Court of Claims 1974).

Pennsylvania: Janet D. v. Carros, No. 1079-73 (Court of Common Pleas, Allegheny County, Pa.), decided March 29, 1974.

J. STERILIZATION

Alabama: Wyatt v. Aderholt, 368 F. Supp. 1382 (M.D. Ala. 1972).

California: In re Kemp, 43 Cal. App. 3d 758 (Court of Appeals, 1974).

Missouri: In re M.K.R., 515 S.W.2d 467 (Supreme Ct., Mo. 1974).

North Carolina: In re Moore, 221 S.E.2d 307 (N.C. Supreme Ct., 1976).

Wisconsin: In re Mary Louise Anderson (Dane County Court, Branch I, Wis.), decided November, 1974.

K. TREATMENT

Alabama: Pugh v. Locke and James v. Wallace, 406 F. Supp. 318 (M.D. Ala. 1976).

Alabama: Wyatt v. Hardin, 325 F. Supp. 781 (M.D. Ala. 1971), 344 F. Supp. 1341 (M.D. Ala. 1971), 344 F. Supp. 373, 387 (M.D. Ala. 1972), aff'd in part, modified in part sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

California: Revels, et al. v. Brian, M.D., et al., No. 658-044 (Superior Ct., San Francisco).

District of Columbia: Evans v. Washington, No. 76-0693 (D.D.C.), filed February 23, 1976.

Georgia: Burnham v. Department of Health of the State of Georgia, 349 F. Supp. 1335 (N.D. Ga. 1972), 503 F.2d 1319 (5th Cir. 1974), cert. denied, ___ U.S. ___, 43 U.S.L.W. 3682 (1975).

Hawaii: Gross v. Hawaii, Civil No. 43090 (Cir. Ct., Hawaii). Consent decree, February 3, 1976.

Illinois: Nathan v. Levitt, No. 74 CH 4080 (Circuit Ct., Cook County, Ill.), consent order, March 26, 1975.

Illinois: Rivera, et al. v. Weaver, et al., Civil Action No. 72C135.

Illinois: Wheeler, et al. v. Glass, et al., 473 F.2d 983 (7th Cir. 1973).

Massachusetts: Ricci, et al. v. Greenblatt, et al., Civil Action No. 72-469F (D. Mass.), consent decree, November 12, 1973.

Ohio: Davis v. Watkins, 384 F. Supp. 1196 (N.D. Ohio 1975).

Pennsylvania: Roe v. Pennsylvania, No. 74-519 (W.D. Pa., filed June 9 1976).

Pennsylvania: Waller v. Catholic Social Services, No. 74-1766 (E.D., Pa.).

Tennessee: Saville v. Treadway, Civil Action No. Nashville 6969 (M.D. Tenn), decided March 8, 1974. Consent Decree, September 18, 1974.

Washington: Boulton v. Morris, No. 781549 (Superior Ct., King County, Wash.), filed June 1974.

L. VOTING

Massachusetts: Boyd, et al. v. Board of Registrars of Voters of Belchertown, No. 75-141 (Sup. Jd. Ct., Mass., September 30, 1975).

New Jersey: Carroll, et al. v. Cobb, et al, No. A-669-74 and A-1044-74 (Superior Ct., N.J., Appellate Division), decided February 23, 1976.

M. ZONING

California: Defoe v. San Francisco Planning Commission, Civ. No. 30789 (Superior Ct., Calif.).

California: City of Los Angeles v. California Department of Health, No. 116571 (Calif. Super. Ct., October 24, 1975).

Colorado: The City of Delta v. Thompson v. Nave and Redwood, No. 75-431 (Colorado Ct. of Appeals), decided December 11, 1975.

Florida: City of Temple Terrace v. Hillsborough Association For Retarded Citizens, Inc., 44 U.S.L.W. 2189 (Fla. Ct. App. 2d District), decided October 10, 1975.

Michigan: Doe v. Damm, Complaint No. 627 (E.D., Mich.).

Minnesota: Anderson v. City of Shoreview, No. 401575 (D. Ct., Second Judicial District, Minn.), decided June 24, 1975.

Montana: State ex rel. Thelan v. City of Missoula, No. 13192 (Supreme Ct., Montana), decided December 8, 1975.

New York: Little Neck Community Association v. Working Organization for Retarded Children (N.Y. Sup. Ct. App. Div., 2d Dept., May 3, 1976).

New York: Village of Belle Terre v. Borass, 91 S.Ct. 1536 (1974).

Ohio: Boyd v. Gateways to Better Living, Inc., Case No. 73-CI-531 (Mahoning County Court of Common Pleas).

Ohio: Driscoll v. Goldberg, Case No. 72-CI-1248 (Mahoning County Ct. of Common Pleas, Ohio), 73 C.A. 49 (Ohio Court of Appeals, 7th District), decided April 9, 1974.

Wisconsin: Browndale International, Ltd. v. Board of Adjustment, 60 Wis.2d 182, 208 N.W.2d 121 (Wis. 1973), cert. denied, 94 S.Ct. 1933 (1974).